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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/726,152	12/02/2003	Mark V. Weaver	TSB-33	2804
22827	7590	01/06/2006		
DORITY & MANNING, P.A. POST OFFICE BOX 1449 GREENVILLE, SC 29602-1449			EXAMINER JOHNSON, JERROLD D	
			ART UNIT	PAPER NUMBER
			3728	

DATE MAILED: 01/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/726,152

Applicant(s)

WEAVER ET AL.

Examiner

Jerrold Johnson

Art Unit

3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 November 2005.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
4a) Of the above claim(s) 5-13 is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☐ Claim(s) _____ is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Examiner Official Notice in view of Goodman (US 3,542,189 or 3,267,633) and Cosier et al. US 3,756,399.

The Examiner takes Official Notice that pre-rinse assemblies of the type set forth in claims 1 and 2 are well known. It is also well known to package plumbing fixtures like those claimed in claim 1 and 2 in skin packaging. Applicant's admitted prior art Fig. 1 (AAPA) evidences this fact. It is also well known to package plumbing fixtures in a vacuum skin package in a *fully assembled* form. Goodman US 3,542,189 and Goodman 3,267,633 both evidence this fact. Note that unlike the plumbing fixture shown in AAPA, both Goodman patents show the plumbing fixtures fully assembled and ready for connection to a water supply.

Cosier discloses using a rigid shell 17 over portions of a product where flexible polyethylene used in vacuum skin packaging (referred to as "shrink-wrap" in the claim 1, which is not consistent with the industry accepted terminology for this process) could possibly undesirably wrap around areas of the product such that the polyethylene could make the process of unpackaging the product difficult. Although the rigid shell 17 is

Art Unit: 3728

originally disposed as a sheet, in the completed form of the package shown in Fig. 4, the sheet has taken on the form of a shell. Additionally, note in Fig. 2, the rigidity of the sheet evidenced by the cantilevered portions of the sheet 17, which shows that the sheet has sufficient rigidity to be self supporting. Further note that "rigid" in claim 1 is not set forth in such a way as to exclude the structure which is shown by Cosier. Nor is any specific definition of "rigid" provided in the specification that would exclude the structure which is shown by Cosier. And, the shell of Cosier is disposed against the substrate in the finished form of the package as is shown in Fig. 4. The sheet of flexible material 18 is shrink wrapped over the shell on the substrate and holds the shell against the substrate.

Accordingly, it would have been obvious to one of ordinary skill in the art to modify a skin packaged pre-rinse assembly to which the Examiner has taken Official Notice as being well known and package the pre-rinse assembly in a fully assembled form as is taught by Goodman as packaging products in their fully assembled form eases the further assembly of these products for use. It further would have been obvious to modify a skin packaged fully assembled pre-rinse assembly with the teaching of Cosier of a rigid shell covering the spring and steel hose so that heated polyethylene could not wrap around the spring and impede the unpackaging of the pre-rinse assembly.

With respect to the Official Notice, it is noted that the Applicant has not challenged this official notice and demanded production of evidence in support thereof. Accordingly, the facts set forth in the official notice are taken to be admitted prior art.

Art Unit: 3728

Nevertheless, the Examiner provides evidence in support of the Official Notice in the form of US Patent 5,624,074 to Parisi, which shows the well known pre-rinse assembly set forth in the Official Notice.

With respect to claim 2, impermeable sleeves lining flexible steel hose is old and well known, and the Examiner takes Official Notice of this fact.

Again, with respect to the Official Notice, it is noted that the Applicant has not challenged this official notice and demanded production of evidence in support thereof. Accordingly, the facts set forth in the official notice are taken to be admitted prior art. Nevertheless, the Examiner provides evidence in support of the Official Notice in the form of US Patent 5,624,074 to Parisi, which shows the well known pre-rinse assembly having impermeable sleeves lining flexible steel hose in the form of a rubber hose 21 within the flexible steel housing 35 of the hose.

With respect to claim 3, Cosier does not disclose polyvinylchloride (PVC) explicitly but does disclose transparent thermoplastic formable materials, such as polyethylene in the formation of the shell. One of ordinary skill in the art would recognize the implicit suitability of PVC in place of polyethylene in this application. Accordingly, the use of PVC would be within the purview of one of ordinary skill in the art. The necessary basis weight of such material would also be within the purview of those skilled in the art, as it has been held that optimizing a result effective variable (basis weight) is within the purview of those skilled in the art.

Early US 5,485,917 cited herein as extrinsic evidence in col. 4 lines 43-55 discloses the suitability of PVC in molded plastic structures and also describes the

known criteria through which one of ordinary skill in the art optimizes the use of that material in a similar application as is claimed herein.

With respect to claim 4, Cosier discloses polyethylene, which is the well known material used in vacuum skin packaging. Again, The necessary basis weight of such material would also be within the purview of those skilled in the art, as it has been held that optimizing a result effective variable (basis weight) is within the purview of those skilled in the art.

Response to Arguments

The two Goodman patents show plumbing fixtures that are packaged in a fully assembled form as is disclosed in the present application and evidence that one of ordinary skill in the art would package the well known structure of a pre-rinse assembly, to which the Examiner has taken Official Notice and provided evidence with the Parisi patent, also in a fully assembled form. The configuring of the rigid shell as is set forth in claim 1, is set forth broadly without providing specific structure that defines over the teaching of Cosier. The benefits provided by the shell Cosier would be obvious to apply to other skin packaged articles, such as pre-rinse assemblies, where the skin would have a tendency to adhere to the article in a manner that would make removing the article from the package difficult.

With respect to applicant's arguments drawn to the prior art failing to recognize the problem solved by applicant. It is not necessary that the prior art suggest the

Art Unit: 3728

combination to achieve the same advantage or result discovered by applicant. In re Linter, 458 F 2d 1013, 173 USPQ 560 (CCPA 1972). However, in the present rejection, it is submitted that the problem solved by Cosier is the same as that of the Applicant, that of preventing heated (vacuum) shrink wrap from adhering to a product disposed on a substrate. Accordingly, the argument is non-persuasive.

Election/Restrictions

This application contains claims drawn to an invention nonelected with traverse. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

Art Unit: 3728

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

The following prior art is made of record and not relied upon is considered pertinent to applicant's disclosure:

Bayer US 5,460,269 in col. lines 3-10 discloses the problem of adherence of the heated skin in skin packaging to the article being packaged. Bayer further discloses the solution to the problem of having separate element separate the skin from the article.

Stratton, Jr. US 2,861,404 also shows a skin packaging structure where a rigid shell covers the article during application of the skin.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jerrold Johnson whose telephone number is 571-272-7141. The examiner can normally be reached on 9:30 to 6:00 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3728

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JDJ



David T. Fidei
Primary Examiner